



City of Chicago
Rahm Emanuel, Mayor

Department of Law

Stephen R. Patton
Corporation Counsel

Revenue Litigation Division
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May 5, 2015

By: U.S. Mail

[REDACTED]

Re: [REDACTED]

Dear [REDACTED]

I am writing in response to your letter of [REDACTED] (copy attached), requesting a private letter ruling on behalf of [REDACTED] under Uniform Revenue Procedures Ordinance Ruling #3. Your request concerns the application of the Chicago Personal Property Lease Transaction Tax ("CTT"), Code chapter 3-32, to the "Cross Connect" charges of [REDACTED]

Without necessarily agreeing with all of the arguments set forth in your letter, the City of Chicago ("City") will not require [REDACTED] to collect CTT on its Cross Connect charges, and it will not assess [REDACTED] for CTT on those charges it received in the past. The City reserves the right, however, to change its position regarding this issue on a prospective basis, with reasonable written notice to [REDACTED]. This opinion is based on the text of the CTT as of the date of this letter, as applied to the facts represented in your letter.

Please let us know if you have questions or need anything further.

Very truly yours,

Weston Hanscom
Deputy Corporation Counsel
Revenue Litigation Division
Department of Law

cc: Joel Flores, Department of Finance
Kim Cook, Department of Law

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September 15, 2014

Ms. Elaine Herman
Manager of Tax Policy
Chicago Department of Finance
333 South State Street, Suite 300
Chicago, IL 60604-3977

Dear Ms. Herman:

On behalf of our client, [REDACTED] ("Company"), [REDACTED] respectfully requests the Chicago Department of Finance (the "Department") to issue a letter ruling ("ruling") with respect to the following factual situation.

The Company is in the business of providing co-location services, interconnection and managed IT infrastructure services. We are requesting a ruling on behalf of [REDACTED] as to whether [REDACTED] Cross Connect services are subject to the Personal Property Lease Transaction Tax ("PPLTT"). We believe that the services are not subject to the PPLTT under the applicable City of Chicago Ordinances and Rulings. The Company and [REDACTED] would like to reserve the opportunity to discuss preliminary responses prior to the issuance of conclusions by the Department.

General Information

1. Enclosed please find a copy of the Power of Attorney and Declaration of Representative, authorizing [REDACTED] to represent the Company before the Department (attached as Exhibit A). The original Power of Attorney and Declaration of Representative is on file with the Department in conjunction with the ongoing audit.
2. This ruling is not requested with regard to hypothetical or alternative proposed transactions. This ruling is requested to determine the PPLTT consequences of the actual business practices of the Company.
3. The Company is currently under audit by the Department for the PPLTT and the ruling requested concerns transactions at issue in the audit.
4. The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter.
5. To the best knowledge of the Company's personnel, the Department has not previously ruled regarding this matter for the Company. In addition, the Company previously has not submitted the same or similar issue to the Department.

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6. The Company requests that certain information be deleted from the ruling prior to dissemination to others. The Company requests deletion of its name, business product names, addresses, locations of facilities, description of facilities, and the name of its representative.
7. The Company knows of no authority contrary to the authorities referred to and cited below.

Statement of Material Facts

The Company operates [REDACTED] which provide customers with co-location centers where customers are provided with space to locate their computer equipment in an environmentally controlled, reliably powered and secure setting. Customers are also provided with direct interconnections to a plethora of telecommunication providers through the [REDACTED]. By locating the [REDACTED] near the world's top financial markets, the Company's customers are able to process transactions at greater speeds than would be possible if the computer equipment were located further away at the customer's IT centers. One reason customers choose to locate their equipment in a Company [REDACTED] is that due to its scope, each [REDACTED] has much greater access to numerous telecommunication and internet service providers, as well as the ability to easily and quickly connect customers with business partners and other networks. However, the benefits which draw customers to an [REDACTED] go beyond this. An [REDACTED] provides a facility which is environmentally controlled in a fashion optimized for computer equipment. Power is reliably supplied, with numerous redundant generators to ensure that power to the equipment is never lost. The customer also seeks the high level of security provided by an [REDACTED]. Physical access to each facility is tightly controlled; only the customer's (or [REDACTED]) employees have access to the "cage" which houses the customer's computers. Additionally, the Company is responsible for maintaining the fiber connections from the "cage" to their chosen partners within the [REDACTED] thus relieving the customer of the worries of line maintenance.

As part of its basic services, the Company provides a customer with both a "cage," a screened off area with limited physical access containing the customer's equipment, and the "dark fiber" cable (fiber optic cable or Ethernet cable which is inactive) that connects the customer's equipment to the telecommunication providers or other customers with whom they connect within the [REDACTED]. When the customer buys its connection to the internet or buys fiber to locations outside of the [REDACTED] the customer then contracts with its chosen third party providers to "light" up the cable (make the fiber optic cable operative) or to provide it internet access outside of the [REDACTED]. Inside the facility, the cable rests in trays located above the customer's equipment. Outside the facility, the cable rests in conduits that are buried underground. Customers are unable to access the cable at any location outside their "cage."

Cross Connect

In a number of cases, a customer within an [REDACTED] desires to have a direct connection between or among its computer equipment and that of its business partner(s) that are located in the same [REDACTED] or one nearby. This direct connection service, called a "Cross Connect," allows for extremely rapid transmission of data at speeds otherwise unavailable through normal data transfer methods. The Cross Connect service is separately stated on invoices and contractual agreements.



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In providing the Cross Connect service, the Company provides a physical connection, the “dark fiber” that runs from the customer’s computer equipment to the business partner’s computer equipment. The customer must still contract with a third party provider to “light” the fiber and allow for the transmission of data. As part of the Cross Connect service, the Company also provides security for the cables, reliable power, as well as any necessary maintenance. The charges for the Cross Connect service is to connect (and maintain and protect the connection) between a customer’s and its business partner’s equipment over one cable. The charges are completely independent of the length or amount of cable used. That is, the charges are the same whether the connection is to the immediately adjacent “cage” or to a “cage” on another floor or in another building. Furthermore, the cost of the cable is immaterial in relation to the charge for the Cross Connect service. For example, bulk fiber optic cable can be purchased for \$2.42 per linear foot (see example of price quote attached as Exhibit B) while the Cross Connect charge averages from \$3,000 to \$4,200 per year.

Ruling Requested

On behalf of the Company, we respectfully request the Department to rule that the Cross Connect service does not constitute the leasing of tangible personal property and is not subject to the PPLTT. Rather, provision of a Cross Connect constitutes a service in which the provision of any tangible personal property is incidental.

RELEVANT AUTHORITIES

The Chicago Personal Property Lease Transaction Tax is imposed upon (1) the lease or rental in the City of Chicago of personal property, or (2) the privilege of using in Chicago personal property that is leased or rented outside the city.¹ “Lease’ or ‘rental’ means any transfer of the possession or use of personal property, but not title or ownership, to a user for consideration, whether or not designated as a lease, rental, license or by some other term, and includes a ‘nonpossessory lease’.”² “Use’ means the exercise of any right to or power over personal property by a lessee incident to the lease or rental of that property. . . .”³

The lease of computers, including time sharing and nonpossessory leases, and computer software are also subject to the PPLTT.⁴

¹ Chicago Municipal Code §3-32-030(A).

² Chicago Municipal Code §3-32-020(I).

³ Chicago Municipal Code §3-32-020(R).

⁴ *Personal Property Lease Transaction Tax Amended Ruling #5* (Sep. 1, 2013).



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Guidance from prior cases and rulings

In *Personal Property Lease Transaction Tax Ruling #3* (Jun. 1, 2004), the Department ruled that:

If the transfer of personal property is incidental to the service provided, in that the use of the personal property has little or no value without the accompanying service and the cost of the personal property is *de minimis* (i.e., nominal) compared to the price charged for the total transaction, then no lease or rental shall be deemed to have occurred, and no portion of the price shall be taxable.⁵

The same ruling also held that “if the lessor or lessor’s agent furnishes the services of operating equipment for a lessee, so that only the lessor or lessor’s agent uses the equipment, and so that the lessor or lessor’s agent remains both in total possession and total control of the equipment, then no lease or rental shall be deemed to have occurred, and no portion of the price shall be taxable.”⁶

DISCUSSION AND ANALYSIS

At the outset, it must be noted that Company is not providing possession of, or access to, computer software or equipment. All of the computer software and equipment referenced in this ruling, or involved with this matter, are the property of the customer and/or the customer’s business partners. The Cross Connect service does not directly involve the sale, lease or use of computer equipment or software; rather, Cross Connect is a service allowing a customer’s computers to directly communicate to those of its business partners. At no time is computer software or equipment that is owned or in the possession of the Company involved in the provision of the Cross Connect service; further, customers are not given any access to computer software or equipment owned by the Company.

Cross Connect is a bundle of services, including the use of some personal property, which allows customers to have secure, reliable, rapid communications with their business partners. It is true that fiber optic cable provides the mechanism by which communications are transmitted; however, customers could obtain cable much more inexpensively if that were the true object of the Cross Connect service. Fiber optic cable can be obtained for \$2.42 per linear foot, perhaps even less based upon vendor and volume. The Cross Connect service is much more costly as it involves a number of services, principally the tight security, reliable power and maintenance free (from the customer’s perspective) aspects. In light of the costs of these services, the actual cost of the property involved is *de minimis*.

As part of the security provided with the Cross Connect service, the customer has virtually no access to the fiber optic cable. A customer has access only to its “cage” containing its equipment, and no access to anything outside of its “cage.” Only a small fraction of the fiber optic cable enters the “cage” and even within the “cage,” the cable is largely inaccessible. Thus, a customer has no effective access to the cable. Access to the cable is limited to the Company and its employees.

⁵ *Personal Property Lease Transaction Tax Ruling #3*, Section 6 (Jun. 1, 2004).

⁶ *Id.*



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Analysis

De Minimis

Where the transfer of personal property is incidental to the service provided, and the cost of the property is *de minimis*, a taxable lease is deemed to not exist despite the fact that there might appear to be a “lease” of personal property.⁷ Such is the case here. The cost of the cable is nominal compared to the price of the Cross Connect service, and becomes even more insignificant over time as the service agreement is extended.

Further proof of the nominal nature of the cable is that the price for the Cross Connect service is completely independent of the amount of cable needed or provided. The Cross Connect service fee is the same whether the connection requires 5 feet or 500 feet of cable. Clearly, when the amount of personal property involved is insufficient to influence the cost of the total service, it can hardly be considered material.

The cost of security, reliable power and the maintenance of the facility and fixtures are expensive undertakings and represent the preponderance of the costs incurred in the provision of the services included in Cross Connect; the cost of the cable is totally *de minimis*.

Ruling #3 makes clear that, where a transaction includes the provision of services and some personal property, if the transfer of property is a nominal part of the cost of a service, no taxable lease will be created. Such is the case here. Cross Connect is predominantly a service of security, provision of reliable power, and worry-free maintenance that allows a customer’s computers to connect with those of its business partners. The property involved is truly nominal as the cost of the service is not based on or directly related to the value or amount of property used. As the property involved in Cross Connect is *de minimis*, *Ruling #3* is directly applicable, and no taxable lease is here present.

Control

Ruling #3 also discusses the issue of control, recognizing that where the “lessor” retains control of the property and operates it for the benefit of the “lessee,” then no taxable lease occurs.⁸ Such is the case here. While the property transferred is nominal, that property which is present is under the control of the Company. As part of the security arrangements desired by the customers, the Company maintains almost total control over the fiber cables. A customer has absolutely no access to anything outside of its “cage” and substantially all of the cable runs outside of the “cage.” The only portion of the cable that is, theoretically, accessible by the customer is the small portion entering the cage and connecting to the equipment. Even so, this portion of the cable is not under the control of the customer; the Company controls and maintains the entire length of the cable. The mere fact that the customer could touch a part of the cable does not constitute control. Control of the cable rests with the Company, which operates the cable as part of the provision of its Cross Connect

⁷ *Id.*

⁸ *Id.*



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service. In fact, the hands-free maintenance provided by the Company is part of the benefits a customer expects when it purchases the Cross Connect service.

As the Company controls and operates the property involved in the Cross Connect service, *Ruling#3* provides that no taxable lease occurs;⁹ providing a second basis under which the Cross Connect service does not constitute a taxable lease.

Conclusion

We respectfully request that the Department issue a ruling stating that the Cross Connect service does not constitute a taxable lease of personal property under Chicago Municipal Code §3-32-030(A).

If the Department cannot make this ruling, we request that the Department contact us at [REDACTED] to determine what additional information is required or allow the taxpayer to withdraw this ruling request.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]

Senior Manager

⁹ *Id.*